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S.2803

MINER Act (Enrolled as Agreed to or Passed by Both House and Senate)

--S.2803--

S.2803

One Hundred Ninth Congress

of the

United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday,

the third day of January, two thousand and six

An Act

To amend the Federal Mine Safety and Health Act of 1977 to improve the safety of mines and mining.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Mine Improvement and New Emergency Response Act of 2006' or the `MINER Act'.

SEC. 2. EMERGENCY RESPONSE.

Section 316 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 876) is amended--

(1) in the section heading by adding at the end the following: `AND EMERGENCY RESPONSE PLANS';

(2) by striking `Telephone' and inserting `(a) In General- Telephone'; and

(3) by adding at the end the following:

`(b) Accident Preparedness and Response-

`(1) IN GENERAL- Each underground coal mine operator shall carry out on a continuing basis a program to improve accident preparedness and response at each mine.

`(2) RESPONSE AND PREPAREDNESS PLAN-

`(A) IN GENERAL- Not later than 60 days after the date of enactment of the Mine Improvement and New Emergency Response Act of 2006, each underground coal mine operator shall develop and adopt a written accident response plan that complies with this subsection with respect to each mine of the operator, and periodically update such plans to reflect changes in operations in the mine, advances in technology, or other relevant considerations. Each such operator shall make the accident response plan available to the miners and the miners' representatives.

`(B) PLAN REQUIREMENTS- An accident response plan under subparagraph (A) shall--

`(i) provide for the evacuation of all individuals endangered by an emergency; and

`(ii) provide for the maintenance of individuals trapped underground in the event that miners are not able to evacuate the mine.

`(C) PLAN APPROVAL- The accident response plan under subparagraph (A) shall be subject to review and approval by the Secretary. In determining whether to approve a particular plan the Secretary shall take into consideration all comments submitted by miners or their representatives. Approved plans shall--

`(i) afford miners a level of safety protection at least consistent with the existing standards, including standards mandated by law and regulation;

`(ii) reflect the most recent credible scientific research;

`(iii) be technologically feasible, make use of current commercially available technology, and account for the specific physical characteristics of the mine; and

`(iv) reflect the improvements in mine safety gained from experience under this Act and other worker safety and health laws.

`(D) PLAN REVIEW- The accident response plan under subparagraph (A) shall be reviewed periodically, but at least every 6 months, by the Secretary. In such periodic reviews, the Secretary shall consider all comments submitted by miners or miners' representatives and intervening advancements in science and technology that could be implemented to enhance miners' ability to evacuate or otherwise survive in an emergency.

`(E) PLAN CONTENT-GENERAL REQUIREMENTS- To be approved under subparagraph (C), an accident response plan shall include the following:

`(i) POST-ACCIDENT COMMUNICATIONS- The plan shall provide for a redundant means of communication with the surface for persons underground, such as secondary telephone or equivalent two-way communication.

`(ii) POST-ACCIDENT TRACKING- Consistent with commercially available technology and with the physical constraints, if any, of the mine, the plan shall provide for above ground personnel to determine the current, or immediately pre-accident, location of all underground personnel. Any system so utilized shall be functional, reliable, and calculated to remain serviceable in a post-accident setting.

`(iii) POST-ACCIDENT BREATHABLE AIR- The plan shall provide for--

`(I) emergency supplies of breathable air for individuals trapped underground sufficient to maintain such individuals for a sustained period of time;

`(II) in addition to the 2 hours of breathable air per miner required by law under the emergency temporary standard as of the day before the date of enactment of the Mine Improvement and New Emergency Response Act of 2006, caches of self-rescuers providing in the aggregate not less than 2 hours per miner to be kept in escapeways from the deepest work area to the surface at a distance of no further than an average miner could walk in 30 minutes;

`(III) a maintenance schedule for checking the reliability of self rescuers, retiring older self-rescuers first, and introducing new self-rescuer technology, such as units with interchangeable air or oxygen cylinders not requiring doffing to replenish airflow and units with supplies of greater than 60 minutes, as they are approved by the Administration and become available on the market; and

`(IV) training for each miner in proper procedures for donning self-rescuers, switching from one unit to another, and ensuring a proper fit.

`(iv) POST-ACCIDENT LIFELINES- The plan shall provide for the use of flame-resistant directional lifelines or equivalent systems in escapeways to enable evacuation. The flame-resistance requirement of this clause shall apply upon the replacement of existing lifelines, or, in the case of lifelines in working sections, upon the earlier of the replacement of such lifelines or 3 years after the date of enactment of the Mine Improvement and New Emergency Response Act of 2006.

`(v) TRAINING- The plan shall provide a training program for emergency procedures described in the plan which will not diminish the requirements for mandatory health and safety training currently required under section 115.

`(vi) LOCAL COORDINATION- The plan shall set out procedures for coordination and communication between the operator, mine rescue teams, and local emergency response personnel and make provisions for familiarizing local rescue personnel with surface functions that may be required in the course of mine rescue work.

`(F) PLAN CONTENT-SPECIFIC REQUIREMENTS-

`(i) IN GENERAL- In addition to the content requirements contained in subparagraph (E), and subject to the considerations contained in subparagraph (C), the Secretary may make additional plan requirements with respect to any of the content matters.

`(ii) POST ACCIDENT COMMUNICATIONS- Not later than 3 years after the date of enactment of the Mine Improvement and New Emergency Response Act of 2006,

a plan shall, to be approved, provide for post accident communication between underground and surface personnel via a wireless two-way medium, and provide for an electronic tracking system permitting surface personnel to determine the location of any persons trapped underground or set forth within the plan the reasons such provisions can not be adopted. Where such plan sets forth the reasons such provisions can not be adopted, the plan shall also set forth the operator's alternative means of compliance. Such alternative shall approximate, as closely as possible, the degree of functional utility and safety protection provided by the wireless two-way medium and tracking system referred to in this subpart.

`(G) PLAN DISPUTE RESOLUTION-

`(i) IN GENERAL- Any dispute between the Secretary and an operator with respect to the content of the operator's plan or any refusal by the Secretary to approve such a plan shall be resolved on an expedited basis.

`(ii) DISPUTES- In the event of a dispute or refusal described in clause (i), the Secretary shall issue a citation which shall be immediately referred to a Commission Administrative Law Judge. The Secretary and the operator shall submit all relevant material regarding the dispute to the Administrative Law Judge within 15 days of the date of the referral. The Administrative Law Judge shall render his or her decision with respect to the plan content dispute within 15 days of the receipt of the submission.

`(iii) FURTHER APPEALS- A party adversely affected by a decision under clause (ii) may pursue all further available appeal rights with respect to the citation involved, except that inclusion of the disputed provision in the plan will not be limited by such appeal unless such relief is requested by the operator and permitted by the Administrative Law Judge.

`(H) MAINTAINING PROTECTIONS FOR MINERS- Notwithstanding any other provision of this Act, nothing in this section, and no response and preparedness plan developed under this section, shall be approved if it reduces the protection afforded miners by an existing mandatory health or safety standard.'

SEC. 3. INCIDENT COMMAND AND CONTROL.

Title I of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 811 et seq.) is amended by adding at the end the following:

`SEC. 116. LIMITATION ON CERTAIN LIABILITY FOR RESCUE OPERATIONS.

`(a) In General- No person shall bring an action against any covered individual or his or her regular employer for property damage or an injury (or death) sustained as a result of carrying out activities relating to mine accident rescue or recovery operations. This subsection shall not apply where the action that is alleged to result in the property damages or injury (or death) was the result of gross negligence, reckless conduct, or illegal conduct or, where the regular employer (as such term is used in this Act) is the operator of the mine at which the rescue activity takes place. Nothing in this section shall be construed to preempt State workers' compensation laws.

`(b) Covered Individual- For purposes of subsection (a), the term 'covered individual' means an

individual--

`(1) who is a member of a mine rescue team or who is otherwise a volunteer with respect to a mine accident; and

`(2) who is carrying out activities relating to mine accident rescue or recovery operations.

`(c) Regular Employer- For purposes of subsection (a), the term `regular employer' means the entity that is the covered employee's legal or statutory employer pursuant to applicable State law.'.

SEC. 4. MINE RESCUE TEAMS.

Section 115(e) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 825(e)) is amended--

(1) by inserting `(1)' after the subsection designation; and

(2) by adding at the end the following:

`(2)(A) The Secretary shall issue regulations with regard to mine rescue teams which shall be finalized and in effect not later than 18 months after the date of enactment of the Mine Improvement and New Emergency Response Act of 2006.

`(B) Such regulations shall provide for the following:

`(i) That such regulations shall not be construed to waive operator training requirements applicable to existing mine rescue teams.

`(ii) That the Mine Safety and Health Administration shall establish, and update every 5 years thereafter, criteria to certify the qualifications of mine rescue teams.

`(iii)(I) That the operator of each underground coal mine with more than 36 employees--

`(aa) have an employee knowledgeable in mine emergency response who is employed at the mine on each shift at each underground mine; and

`(bb) make available two certified mine rescue teams whose members--

`(AA) are familiar with the operations of such coal mine;

`(BB) participate at least annually in two local mine rescue contests;

`(CC) participate at least annually in mine rescue training at the underground coal mine covered by the mine rescue team; and

`(DD) are available at the mine within one hour ground travel time from the mine rescue station.

`(II)(aa) For the purpose of complying with subclause (I), an operator shall employ one team that is either an individual mine site mine rescue team or a composite team as provided for in item (bb)(BB).

`(bb) The following options may be used by an operator to comply with the requirements of item (aa):

`(AA) An individual mine-site mine rescue team.

`(BB) A multi-employer composite team that is made up of team members who are knowledgeable about the operations and ventilation of the covered mines and who train on a semi-annual basis at the covered underground coal mine--

`(aaa) which provides coverage for multiple operators that have team members which include at least two active employees from each of the covered mines;

`(bbb) which provides coverage for multiple mines owned by the same operator which members include at least two active employees from each mine; or

`(ccc) which is a State-sponsored mine rescue team comprised of at least two active employees from each of the covered mines.

`(CC) A commercial mine rescue team provided by contract through a third-party vendor or mine rescue team provided by another coal company, if such team--

`(aaa) trains on a quarterly basis at covered underground coal mines;

`(bbb) is knowledgeable about the operations and ventilation of the covered mines; and

`(ccc) is comprised of individuals with a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team.

`(DD) A State-sponsored team made up of State employees.

`(iv) That the operator of each underground coal mine with 36 or less employees shall--

`(I) have an employee on each shift who is knowledgeable in mine emergency responses; and

`(II) make available two certified mine rescue teams whose members--

`(aa) are familiar with the operations of such coal mine;

`(bb) participate at least annually in two local mine rescue contests;

`(cc) participate at least semi-annually in mine rescue training at the underground coal mine covered by the mine rescue team;

`(dd) are available at the mine within one hour ground travel time from the mine rescue station;

`(ee) are knowledgeable about the operations and ventilation of the covered mines; and

`(ff) are comprised of individuals with a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team.'

SEC. 5. PROMPT INCIDENT NOTIFICATION.

(a) In General- Section 103(j) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 813(j)) is amended by inserting after the first sentence the following: `For purposes of the preceding sentence, the notification required shall be provided by the operator within 15 minutes of the time at which the operator realizes that the death of an individual at the mine, or an injury or entrapment of an individual at the mine which has a reasonable potential to cause death, has occurred.'.

(b) Penalty- Section 110(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 820(a)) is amended--

(1) by striking `The operator' and inserting `(1) The operator'; and

(2) by adding at the end the following:

`(2) The operator of a coal or other mine who fails to provide timely notification to the Secretary as required under section 103(j) (relating to the 15 minute requirement) shall be assessed a civil penalty by the Secretary of not less than \$5,000 and not more than \$60,000.'.

SEC. 6. NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH.

(a) Grants- Section 22 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 671) is amended by adding at the end the following:

`(h) Office of Mine Safety and Health-

`(1) IN GENERAL- There shall be permanently established within the Institute an Office of Mine Safety and Health which shall be administered by an Associate Director to be appointed by the Director.

`(2) PURPOSE- The purpose of the Office is to enhance the development of new mine safety technology and technological applications and to expedite the commercial availability and implementation of such technology in mining environments.

`(3) FUNCTIONS- In addition to all purposes and authorities provided for under this section, the Office of Mine Safety and Health shall be responsible for research, development, and testing of new technologies and equipment designed to enhance mine safety and health. To carry out such functions the Director of the Institute, acting through the Office, shall have the authority to--

`(A) award competitive grants to institutions and private entities to encourage the development and manufacture of mine safety equipment;

`(B) award contracts to educational institutions or private laboratories for the performance of product testing or related work with respect to new mine technology and equipment; and

`(C) establish an interagency working group as provided for in paragraph (5).

`(4) GRANT AUTHORITY- To be eligible to receive a grant under the authority provided for under paragraph (3)(A), an entity or institution shall--

`(A) submit to the Director of the Institute an application at such time, in such manner, and

containing such information as the Director may require; and

`(B) include in the application under subparagraph (A), a description of the mine safety equipment to be developed and manufactured under the grant and a description of the reasons that such equipment would otherwise not be developed or manufactured, including reasons relating to the limited potential commercial market for such equipment.

`(5) INTERAGENCY WORKING GROUP-

`(A) ESTABLISHMENT- The Director of the Institute, in carrying out paragraph (3)(D) shall establish an interagency working group to share technology and technological research and developments that could be utilized to enhance mine safety and accident response.

`(B) MEMBERSHIP- The working group under subparagraph (A) shall be chaired by the Associate Director of the Office who shall appoint the members of the working group, which may include representatives of other Federal agencies or departments as determined appropriate by the Associate Director.

`(C) DUTIES- The working group under subparagraph (A) shall conduct an evaluation of research conducted by, and the technological developments of, agencies and departments who are represented on the working group that may have applicability to mine safety and accident response and make recommendations to the Director for the further development and eventual implementation of such technology.

`(6) ANNUAL REPORT- Not later than 1 year after the establishment of the Office under this subsection, and annually thereafter, the Director of the Institute shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives a report that, with respect to the year involved, describes the new mine safety technologies and equipment that have been studied, tested, and certified for use, and with respect to those instances of technologies and equipment that have been considered but not yet certified for use, the reasons therefore.

`(7) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated, such sums as may be necessary to enable the Institute and the Office of Mine Safety and Health to carry out this subsection.'

SEC.

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